



MARK YOUR CALENDARS! SOUTH DAKOTA REAL ESTATE COMMISSION EDUCATIONAL CARAVAN – SPRING 2006

Pierre - Ramkota – May 15th
Rapid City - Ramkota – May 16th
Spearfish – Holiday Inn – May 17th
Sioux Falls - Ramkota – May 22nd and 23rd
Watertown - Ramkota – May 24th
Aberdeen – Ramkota – May 25th

Instructor: Marie Spodek

Course: The New M&M's in Real Estate: Mold & Meth Disclosure and What Every Real Estate Licensee Should Know About Homeowners Insurance - 6 required hours

Registration Fee: \$50.00 (including cookies during morning break)

Class begins at 9:00 a.m. (Walk in registration begins at 8:15 a.m.)

For access assistance, handicapped persons may call the Commissions office at (605) 773-3600

Pre-registration is required to guarantee admission and is **STRONGLY ENCOURAGED**. Failure to register may prohibit your attendance if the class is full. The Commission will retain \$10 of any refunded registration fee. Please complete and mail the registration form below along with the registration fee to the S.D. Real Estate Commission at 221 West Capitol, Suite 101, Pierre SD 57501. Registration deadline is 5 days prior to each session.

✂ _____

Name _____ License Number and Type _____

(Mailing Address) (City) (State) (Zipcode) (Phone)

Please check which you would like to attend.

- | | | |
|---|---|---|
| <input type="checkbox"/> Pierre – May 15 th | <input type="checkbox"/> Rapid City – May 16 th | <input type="checkbox"/> Spearfish – May 17 th |
| <input type="checkbox"/> Sioux Falls – May 22 nd | <input type="checkbox"/> Sioux Falls – May 23 rd | <input type="checkbox"/> Watertown – May 24 th |
| <input type="checkbox"/> Aberdeen – May 25 th | | |

Registrations received by fax will NOT be accepted.

A Letter From the Chairman



Happy New Year!
I think?

I hope that everyone had great holiday and is now ready to get back to selling, meaning that your renewal is in along with proof of E and O insurance and all the continuing education required. We have compiled some interesting statistics about the renewals; It seems that the larger cities which have easier access to CE and most probably more to lose in terms of dollars and cents, are those who were the last to complete their education. There were Principal Brokers who waited until the end and that is a scary thought. The commission is not here to reprimand or criticize anyone but when you're jeopardizing all of the listings I think that it's only fair to bring this to your attention before the first caravan so that you'll have plenty of time to plan your schedule around them so that this doesn't happen again.

Enough of the lecturing, 2006 looks like it's going to be better than '05 which is great for the industry. But along with success comes new licensees, so if you have a newbie please mentor them so that they comply with the rules and regulations. You old timers might be surprised at what you'll learn from them. Anyway "Happy Selling"!

Until next time,
Charlie



A Reminder about Trust Accounts

Brokers and Property Managers are reminded to make sure ALL trust accounts have been registered with the SDREC office.

From the Directors Desk



Whew! We made it through another renewal period. This past one was particularly frustrating because there was an increased number of licensees who completed their continuing education in December and January. In addition, there were 75 active licensees who failed to renew their errors and omissions insurance before January 1st. Licensees who did not have their licenses prominently displayed on January 1st were placed on inactive status and their license histories reflect this. For those of you renewing your licenses in 2006, I suggest you get your continuing education completed well in advance of the November 30th deadline. I also encourage everyone to timely renew your errors and omissions insurance.

I am pleased to announce that Michelle Metzinger has joined the Commission staff as an auditor/investigator. Michelle comes to the Commission from the SD Housing Development Authority where she was a mortgage purchase officer. Prior to that, she was a real estate loan processor with a Pierre bank. In addition to her audit and investigative duties, Michelle will review condominium and timeshare applications, as well as inspect those projects. She's been in Sioux Falls learning the ropes from Tim Buseman and will soon be on the road to visit the offices in her territory. Michelle, welcome to the Commission staff!

There are two bills making their way through the legislature that will be of interest to most of you. One of these bills amends the unprofessional conduct statutes to require a license to obtain **written** permission from an owner before advertising or marketing a property. The second bill allows a licensee and other licensees within the same firm to form a business entity for the collection of commissions.

In January, the nation celebrated the birth of Martin Luther King. In February the nation mourned the death of his wife Coretta Scott King. The accomplishments these two individuals made for the Civil Rights Movement, including Fair Housing, are immeasurable. Dr. King is famous for his many words of wisdom. One of my favorite

quotes of Dr. King that I hope we practice daily is, "The time is always right to do what is right."

DjN

Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter, excluding cases currently on appeal. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

Steven Folk, Sioux Falls, Broker.

Stipulation and Assurance of Voluntary Compliance. Completion of 6 hours of continuing education on agency and 6 hours on contracts within one year. Folk shall also develop new listing and agency forms which shall substantially conform to the forms mandated by the SDREC and shall not contain an automatic extension of a listing upon the conversion of the listing from non MLS to MLS. Folk further agrees to revise his office policy whereby, upon the initial listing of the property without the benefit of the MLS, the owner initials the portion of the listing agreement which would preclude other licensees from showing the property to their clients until such time as the listing has been converted to include MLS. Pay costs \$181.50. Alleged violation of SDCL 36-21A-71 (1); (30); (31); (32); (33) and 36-21A-132 (1); (2) and (3).

Ryan Olsen, Rapid City, Broker.

Findings of Fact, Conclusions of Law, and Order that Mr. Olsen's actions constitute unprofessional conduct in several ways. Mr. Olsen failed to disclose to an owner in writing the licensee's intention or true position, under SDCL 36-21A-71 (13). Olsen did directly or indirectly through a third-party acquire or intended to acquire an interest in property listed with his office. Olsen and Assist 2 Sell failed to deal fairly with all parties to the transaction, under SDCL 36-21A-71(31). Olsen and Assist 2 Sell further engaged in unprofessional conduct under SDCL 36-21A-71(32) by committing any act constituting or demonstrating bad faith, by failing to engage in full disclosure with all parties as the law requires. Penalty of \$1000 and costs of \$1995.56. Completion of 6 hours education on agency law and 7 hours of education on ethics within one year.

Unprecedented Efficiency Regulations Impact Entire Real Estate Community

By Beth McGuire

(Reprinted from RISMEDIA Real Estate News Service [February, 2006] with permission of RISMEDIA, Inc. www.rismedia.com, Copyright 2006. All rights reserved.)

RISMEDIA, Feb. 13 — A new energy law that went into effect in January requires more attention and understanding from real estate professionals in an already time-strapped business environment.

The U.S. Dept. of Energy (DOE) has initiated new regulations regarding air conditioning. Manufacturers rate this type of equipment and others, such as heat pumps, on their efficiency using what's known as SEER ratings. Seasonal-Energy-Efficiency-Ratio

For several years, the minimum efficiency standard has been 10 SEER. On Jan. 23, 2006, the law changed to require 13 SEER equipment.

Mandates impact the heating, ventilation and air conditioning market. The new standard requires manufacturers to cease production of A/C components rated less than 13 SEER. While no one can predict how long existing systems may remain in use, manufacturers are now prohibited by law to build A/C components rated less than 13 SEER. The law will ultimately result in a phase-out of less efficient machines altogether.

One result of 13 SEER is the increased size of the new units: they are almost twice as large as 10 SEER units are. They take up more space in warehouses and delivery trucks, and may require more than one person to carry and install. That means additional work hours and more cost to both contractors and consumers, which can add up to frustration and headaches for agents and brokers. Increased efficiency standards affect home buyer and seller budgets.

According to a 2005 homeowner survey by A/C manufacturer Emerson, 90% of homeowners had heard nothing about 13 SEER, and 77% had never heard the term "SEER rating." That means it's likely that your clients are equally in the dark. Homeowners will face another very real problem when the industry depletes the

existing supply of less efficient components now that building them is illegal.

An A/C system includes two units that work together: one outside and one inside. If the outside unit of a less efficient system breaks down and there are no compatible parts left to repair it, there may be no other option than to upgrade the entire unit to 13 SEER.

Since the indoor unit must be compatible with the one outdoors to meet manufacturer efficiency guidelines, it will require additional work to get the system running again. This expense will likely be unexpected and could be costly.

Agents face client frustration and reduced business-building time.

It's understandable that homeowners will be frustrated when they face a possible system upgrade instead of the standard repair they were expecting. The lack of education on 13 SEER and energy efficiency in general will serve to compound that frustration with shock and related financial worries.

Explaining the implications of 13 SEER, possible system upgrades and associated costs can rob agents of time they need to build their businesses. It takes additional time to research the legislation and find the answers to homeowner questions. These two time-drainers are major issues in an industry where time truly does equal money.

Another scenario that poses risk to the real estate professional is a home warranty that doesn't address 13 SEER. Agents jeopardize referrals and good reputations if clients learn that an agent-recommended product they've just purchased is virtually useless in light of the stricter DOE mandates.

Forewarned is fore-armed: Learn about 13 SEER before clients do. In light of all of this information, it's worrisome that so much time and money will go to helping clients deal with 13 SEER. Related, unexpected price increases and home warranties that do not address the legislation add to homeowner concern and annoyance.

Certain manufacturers and service providers, such as American Home Shield, are prepared to help agents prepare for the new standards.

"We work very closely with the real estate community and understand their frustrations and constraints," says Steve Burnett, chief marketing officer at American Home Shield. "We're supplying easy-to-understand learning tools for agents to share

with their clients and also making sure our field team is knowledgeable on 13 SEER."

AHS has taken additional steps to address the efficiency transition, including:

- Providing current AHS home warranty holders the right to upgrade and get 13 SEER coverage now for just \$30.
- Enhancing their contracts for new clients and renewals
- Staffing an informed, responsive 13 SEER resource center available at (800) 735-4663 and online at www.13SEERsolutions.com

To learn more about 13 SEER efficiency guidelines, check out www.energy.gov, where you can read the actual 13 SEER legislation and find out about the history of the new mandates. Contact the U.S. Dept. of Energy for more legislative information by phone at 800-DIAL-DOE. For more info, visit www.ahswarranty.com.

South Dakota Real Estate VIEW

Official Publication of the
South Dakota Real Estate Commission
221 West Capitol, Suite 101
Pierre, South Dakota 57501

Telephone: 605-773-3600

Facsimile: 605-773-4356

Website: www.state.sd.us/sdrec

E-mail: dr.ralestate@state.sd.us

Editor-in-Chief: Dee Jones Noordermeer

Editor: Karen Callahan

THE COMMISSION AND STAFF

Charles Larkin, Chairman Watertown
Brian Jackson, Vice-Chair Sioux Falls
Eileen Fischer, Member Pierre
Dennis Einsach, Member Pierre
Paula Lewis, Member Rapid City
Dee Jones Noordermeer,

Executive Director Pierre
Karen Callahan, Education Dir. Pierre
Norma Schilling, Licensing Pierre
Michelle Metzinger, Auditor Pierre
Tim Buseman, Auditor Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

Results of Operation “Quick Flip”

Press Release (FBI National Press Office)

Washington, D.C. – The FBI along with the Housing and Urban Development Office Inspector General, Internal Revenue Service, the U.S. Postal Inspection Service and the Department of Justice announced the results of an ongoing initiative to combat the growing epidemic of mortgage fraud. Operation Quick Flip is designed to show that federal law enforcement recognizes the mortgage fraud threat. The Federal Bureau of Investigation Criminal Investigative Division (CID), the Department of Housing and Urban Development (HUD) Office of the Inspector General (OIG), the United States Postal Inspection Service (USPA), the Internal Revenue Service (IRS), and the Department of Justice (DOJ) have participated in this case round-up to provide information to the public regarding the federal government's efforts to combat mortgage fraud. The federal agencies involved are targeting mortgage fraud groups in order to disrupt and dismantle them permanently.

Mortgage Fraud is one of the fastest growing white color crimes in the United States. Mortgage Fraud is defined as a material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase, or insure a loan. There are two types of Mortgage Fraud: fraud for property and fraud for profit. Fraud for Property, also known as Fraud for Housing, usually involves the borrower as the perpetrator on a single loan. The borrower makes a few misrepresentations, usually regarding income, personal debt, and property value, or there are down payment problems. The borrower wants the property and intends to repay the loan. Sometimes industry professionals are involved in coaching the borrower so that they qualify. Fraud for Property/Housing accounts for 20 percent of all fraud.

Fraud for Profit involves industry professionals. There are generally multiple loan transactions with several financial institutions involved. These frauds include numerous gross misrepresentations including: income is overstated, assets are overstated, collateral is overstated, the length of employment is overstated or fictitious

employment is reported, and employment is backstopped by co-conspirators. The borrower's debts are not fully disclosed nor is the borrower's credit history, which is often altered. Often, the borrower assumes the identity of another person (straw buyer). The borrower states he intends to use the property for occupancy when he/she intends to use the property for rental income, or is purchasing the property for another party (nominee). Appraisals almost always list the property as owner-occupied. Down payments do not exist or are borrowed and disguised with a fraudulent gift letter. The property value is inflated (faulty appraisal) to increase the sales value to make up for no down payment and to generate cash proceeds in fraud for profit.

Federal law enforcement is working with state and local law enforcement, regulators, and financial institution industry to combat the problem. OFHEO (Office of Federal Housing Enterprise Oversight) has passed a regulation requiring Freddie Mac and Fannie Mae to report suspicious mortgage fraud activity on a Mortgage Incident Notice (MFIN). FBI, OFHEO, and FinCEN (Financial Crimes Enforcement Network) are working to establish a reporting device similar to the banking industry's Suspicious Activity Report. This is in progress, but will likely take some time as regulations and possibly legislation will have to be passed. The FBI, HUD-OIG, USPS, and IRS conduct criminal investigations into Mortgage Fraud Activity with a goal of disrupting and dismantling mortgage fraud rings. We strongly support joint investigations to effectively utilize all of our limited resources while strengthening investigations by tapping into everyone's expertise.

From July 2, 2005, until October 27, 2005, the FBI, HUD-OIG, USPS, IRS, in coordination with the DOJ, indicted 156 mortgage fraud subjects. A total of 81 arrest were made. A total of 89 convictions were obtained, and 60 subjects were sentenced during this time frame. A combined loss to the industry by the above-subjects is \$606,830,604.

For FY 2005, the following stats are:

- 21,994 SARs were filed (up from 17,127 in Fiscal Year 2004).
- 721 pending FBI Mortgage Fraud cases (up from 534 in Fiscal Year 2004).
- 1,020 pending HUD-OIG Mortgage Fraud cases (up from 920 in FY 2004).

- 206 FBI indictments/informations (down from 241 in Fiscal Year 2004).

- 170 FBI convictions (consistent with 172 convictions in Fiscal Year 2004).

- \$1,014,000,000 (FBI) reported loss (up from \$429,000,000 in Fiscal Year 2004).

The hot spots for Mortgage Fraud activity in 2004 (per capita) were: California, Nevada, Utah, Arizona, Colorado, Missouri, Illinois, Maryland, Georgia, and Florida.

Visit the Federal Bureau of Investigation Website at: www.fbi.gov

Continuing Education Corner

*By Karen Callahan, Director of
Education*

William Butler Yeats once said, “Education is not the filling of a pail, but the lighting of a fire”. I was reminded of this quote as I was compiling the continuing education report at the conclusion of the last license renewal period. Unfortunately, when it came time to renew licenses, many licensees' education “pails” were empty, causing the SDREC office to spend much time “lighting fires”. I don't think this was quite what Yeats had in mind.

Of the 1218 licensees that renewed licenses at the end of 2005, 161 of these licensees did not complete their education requirements until December, many waiting until the last few days of the year. Some licensees found out the hard way what happens when the education requirements are not met and they did not have an active license on January 1. The result was unplanned time off and the responsible broker explaining to clients why their agent was temporarily unavailable.

When you consider the fact that education courses are readily available – 200+ classroom courses and approximately 100 distance learning courses approved in 2004-2005, it's a mystery why many licensees are choosing to wait until the last minute to fulfill their education requirements.

Procrastination aside, the issue is likely one of perspective. Continuing education is often viewed in the same manner as many other government-regulated tasks, such as filing tax returns and renewing license plates.

Instead, continuing education should be embraced for what it really is, an opportunity to maintain and enhance professional competence.

At the last caravan, our speaker Debbie Long, discussed the many benefits of continuing education. She cited recent studies that indicate a link between continuing education and higher earning potential, fewer disciplinary actions, and even increased health benefits!

Despite being a rural state, we are fortunate to have many wonderful educators and course providers who play an integral part in the availability of quality educational opportunities in South Dakota. They have been and continue to be responsive to the needs of licensees by offering a wide array of course topics in many locations across the state.

Technology also plays an important role in our education system. Internet-based and CD-ROM courses continue to improve and have become a popular choice due to the convenience these courses offer. In addition, the Internet offers licensees the ability to view their education reports as well as a schedule of approved continuing education courses. This information is available at the SDREC's website: www.state.sd.us/sdrec.

I would encourage each licensee to consider the education requirement as a chance to expand both personal and professional skills and to take courses not only early, but often. If we take time to light the fires now, the pails will be overflowing by renewal time.

Attorney General Larry Long and the Division of Banking Sign Agreement with Ameriquest to Reform its Lending Practices to Resolve States' Investigations

Jan. 23, 2006 - Attorney General Larry Long and the SD Division of Banking announced today that Ameriquest Mortgage Company, the nation's largest sub-prime lender, has agreed to pay \$295 million to

consumers and make sweeping reforms of practices that states alleged amounted to predatory lending. Ameriquest also will pay a total of \$30 million to the 49 states and D.C. that are participating in the settlement agreement for costs of the investigation and consumer education and enforcement.

"We believe that Ameriquest engaged in unfair and deceptive practices that directly affected South Dakota consumers," said Long. "High pressure sales tactics were used to reach desired sales quotas and to sell mortgage refinances. We believe that this agreement will correct these practices and will provide restitution to these consumers."

"We are pleased that Ameriquest has agreed to implement changes in their lending practices," said Roger Novotny, Director, SD Division of Banking. "This agreement will allow for new industry standards for other mortgage lenders."

In the agreement, Ameriquest denies all the allegations raised by the states, but the company agreed to a battery of new standards to prevent what the states alleged were unfair and deceptive practices.

Ameriquest primarily makes refinancing loans to existing homeowners who are hoping to consolidate credit card and other debt into their new home mortgage and come out ahead with overall monthly savings. Borrowers who don't have the best credit ratings may turn to sub-prime loans, which often have higher interest rates and other costs.

Under the agreement, Ameriquest is required to:

- Not encourage prospective borrowers to falsify income sources or income levels.
- Provide the same interest rates and discount points for similarly-situated consumers.
- Not pay sales personnel incentives to include prepayment penalties or any other fees or charges in the mortgages.
- Provide full disclosure regarding interest rates, discount points, prepayment penalties, and other loan or refinancing terms.
- Overhaul its appraisal practices by removing branch offices and sales personnel from the appraiser selection process, instituting an automated system to select appraisers from panels created in each state, limiting the company's ability to get second opinions on appraisals, and prohibiting

Ameriquest employees from influencing appraisals.

- Provide accurate, good faith estimates.
- Limit prepayment penalty periods on variable rate mortgages.
- Not engage in refinancing solicitations during the first 24 months of a loan, unless the borrower is considering refinancing.
- Use independent loan closers.
- Adopt policies to protect whistle-blowers and facilitate reporting of improper conduct.

The agreement also provides for appointment of an independent monitor to oversee Ameriquest's compliance with the settlement terms. The monitor will submit periodic compliance reports to the Attorneys General during the next five years. Ameriquest will pay the monitor's costs.

The company will pay \$325 million – \$295 million for consumer restitution and \$30 million to settling states to cover their costs and fund consumer education and consumer protection enforcement programs. Consumers do not need to take any action at this point to pursue recoveries. They will be contacted in the next few months by the states as specific recovery terms and plans are determined.

Of the \$295 million in restitution, \$175 million will be distributed in a nationwide claims process to eligible Ameriquest customers who obtained mortgages from January 1, 1999, through April 1, 2003 with payments based on a formula set by the settling states.

Another \$120 million in restitution will be allocated to the settling states based on the percentage of total Ameriquest loans held by consumers in each state and will be used to compensate Ameriquest customers who obtained mortgages between January 1, 1999, and December 31, 2005. Each settling state will determine which customers in its jurisdiction are eligible to receive money from this restitution fund.

Individual states' exact share of restitution funds has not been determined, but a reasonable estimate is that South Dakota's share will be over \$92,000. The estimated number of affected South Dakota consumers is 394. The settlement was signed by the Attorneys General of 49 states and the District of Columbia, and by banking regulators of 45 states. Each signing state will file the settlement, along with consumer protection lawsuits resolved by the settlement, in their respective state courts

within 45 days. The courts must approve the settlement before it becomes final.

Today's development culminates about two years of investigation by the Attorneys General, state banking regulators and local prosecutors. Law enforcement officials and regulators initiated their investigation after receiving hundreds of complaints from Ameriquest customers across the country. The ensuing investigation uncovered consumer protection problems in areas governed by the settlement. The alleged improper practices included: inadequate disclosure of prepayment penalties, discount points and other loan terms; unsolicited refinancing offers that did not adequately disclose prepayment penalties; improperly influenced and inflated appraisals; and encouraging borrowers to lie about income or employment to obtain loans.

If you need any additional information regarding this settlement call the Consumer Protection Division at 1-800-300-1986, or send email to consumerhelp@state.sd.us.

New Licensees

Broker

Lundy, Rochelle R – Merrill, IA
Penrod, Richard – Gettysburg
Scrader, Rex D – Columbia City, IN
Sealey, Ivadell M – Ortonville, MN
Stein, Alan B – Wichita, KS
Trainer, Alvin (Al) L – Rapid City

Broker Associates:

Aaker, Donald I – Spearfish
Ackerman, Clint A – Harrisburg
Anderson, Melissa J – Mitchell
Barber, Kathryn A – Aberdeen
Belitz, Cody L – Sioux Falls
Beshara, Laura – Spearfish
Bradeen, Jil J – Custer
Briggs, Michael D – Watertown
Buhl, Wayne A – Britton
Bures, Dawn M – Sioux Falls
Busetti, Joelle A – Hill City
Busetti, Michael C – Hill City
Butler, David L – Rapid City
Christensen, Amy L – Vermillion
Colby, R. Michael – Sioux Falls
Doering, Penny R – Spearfish
Dunham, Linda R – Sioux Falls
Fagnan, Robert D – Harrisburg
Faust, Jon K – Belle Fourche
Fisher, Danielle M – Sioux Falls
Goodine, Faith – Sturgis

Graf, Dawn S – Pringle
Guthmiller, Kami J – Yankton
Hagggar, Barbara – Sioux Falls
Halverson, Dennis – Fairview
Hasvold, David E – Sioux Falls
Hendrickson, Mike S – Trent
Hentges, Wendy – Milbank
Hidalgo, Nancy G – Sioux Falls
Hofer, DeWayne E – Tea
Howard, Keith D – N. Sioux City
Iverson, Bryan R – Rapid City
Jaragoske, Angela D – Rapid City
Johns, Le Ann L – Lead
Kindvall, Scott R – Sioux Falls
Kjenstad, Jeanette L – Brandt
Koch, Bonnie M – Custer
Koska, Dustin A – Watertown
Leibel, Terry – Pierre
Lynde, Jamie L – Rapid City
Mattingly, Susan M – Watertown
McMahon, Lucinda L – Big Stone City
McNally, Kelley L – Sioux Falls
Meiers, Keith A – Tyndall
Metz, Kara – Spearfish
Morrison, Marla M – Spearfish
Parrett, Patricia – Spearfish
Rypkema, Ryon – Hermosa
Schlosser, II, William (Billy) A – Sturgis
Smith, Lariann J – Rapid City
Stoeser, Debra L – Fort Pierre
Stone, Graham G – Rapid City
Tharp, James A – Huron
Van Otterloo, April L – Sioux Falls
Vaplon, Daniel W – Belle Fourche
Wells, Keri A – Rapid City
White, Benjamin M – Sioux Falls
Wilson, Frederick W – Belle Fourche

Home Inspectors

Bruder, Ervin P – Brandon
Daniels, Joseph L – Sioux Falls
Geddes, Trenton E – Sioux Falls
Kieckhefer, Jon R – Volga

Residential Rental Agent

Blau, Nicholas J – Sioux Falls
Bonney, Richard C – Hot Springs
Dowd, Patrick J – Sioux Falls
Gomez, Cassandra J – Spearfish
Hale, Marcella E – Sturgis
Hardt, Jessica J – Brookings
Herrboldt, Greg – Sioux Falls
Wesche, Julie A – Brookings

Salesperson

Case, Angela M – Sioux City, IA
Delfs, Teresa E – Sioux City, IA

Magnussen, Wendy S – Merville, IA
Thomas, Vicky L – Correctionville, IA
Welch, Jennifer L – Kingsley, IA
Wingert, Jon A – Estherville, IA

Seller's Estate, Real Estate Agents Sued over Lead Contamination

By Beth Bresnahan

(Reprinted from RISMEDIA Real Estate News Service [January, 2006] with permission of RISMEDIA, Inc. www.rismedia.com, Copyright 200x. All rights reserved.)

RISMEDIA, Jan 5 - Jim Parcesepe looked at the Middletown, Connecticut house at 84 Ridge Road and saw, with his home remodeler's eye, what it could be: A large home for him and his pregnant wife, Kelly, and their two boys. A place he and his partner, Chris May, could "blow out" – renovate and expand. He saw a chance to use the equity they would gain in a few years to buy another house; maybe rent this one and build another house on the ¾-acre lot.

Three years later, those plans are dead. They were shattered by the discovery, two months after the sale in January 2003, that the house had been contaminated with lead-based paint dust and that a young child living in the house had suffered lead poisoning there.

Renovators had apparently sandblasted the walls, spewing lead dust in 2002. City housing inspectors had whisked the child off the property after tests showed significant amounts of lead in the child's blood.

The house at 84 Ridge Road was contaminated – or "hot" in the jargon of the inspectors – but Jim and Kelly Parcesepe and Chris May were never told that when they bought the house for \$155,000.

The former owner, Mitchell Chlasta, who has since died, never fully disclosed the extensive history of lead contamination in the 103-year-old house.

Under federal law, an owner is required to reveal both knowledge and records of lead contamination to a prospective buyer before a property is sold. The disclosure laws went into effect in 1996, 18 years after lead-based paint was banned in this country in 1978.

When the Parcesepes learned eight weeks after the closing that the young child had significantly elevated lead levels,

determined in tests in 2002, their lives went from drive to neutral.

Jim Parcesepe, 33, scrambled to learn all he could about the contamination in the house.

The thick file on 84 Ridge Road in the city Health Department made him sick. The relevant information in that file should have been given to the Parcesepes and May by the sellers 10 days before the closing, state and federal regulators told The Courant.

The Parcesepes had their two boys, Maxx and Anthony, tested for lead poisoning in 2003. The federal threshold for serious health concerns is 10 micrograms per deciliter of blood. Maxx's blood tested 8, Anthony's tested 7.

Olivia, born in 2003, registered a 10 with a pin-prick test this past fall. A panicked Kelly took her for the more accurate blood test, and it registered a 4. The national average in children is 2.8.

The children are tested every three months and their levels have come down. The second floor of the house, which May had begun to renovate, has been locked and sealed off since March 2003. The floor is off limits to the kids. Olivia, now 2, has never been up there.

The city had ordered the Chlastas to abate the lead problem and the house had been declared "lead safe" before it was sold. But the Chlastas were under a lead-management plan, meaning that the house had to be inspected at least annually and that specific precautions – vacuums with special filters, workers wearing protective garb and respirators – would be required before renovations like those undertaken by the Parcesepes and May could proceed.

They buyers did not know of the abatement or the lead-management plan when they bought the house and started the work. At the bottom of the first page of the Chlastas' lead-management document, it says, "This plan must be transferred with ownership of the property upon transfer of title." It was not.

"They have a civil action," Richard Maloney, head of trade practices for the state Department of Consumer Protection, said after hearing a description of what the Parcesepes are going through.

Maloney said that not only is a seller obligated to disclose the lead-contamination history of a property, but real estate agents who represent sellers and buyers have an obligation to make sure that relevant

information about the safety of a house is fully revealed.

In fact, federal guidelines specify that if disclosure rules are broken, buyers and renters can sue for triple damages.

The Parcesepes have taken action. They sued the estate of the former owner, as well as the real estate agents who were involved. The lawsuit asserts that the house is worth tens of thousands of dollars less than what they paid; that they cannot proceed with any renovations or expansions; and that their use of the house is confined to the first floor.

At the first settlement conference, lawyers representing Thomas Chlasta, the executor of his father's estate, and the real estate agents offered \$25,000.

That's a little more than half of what the Parcesepes and May, who is living elsewhere, put into the house after they bought it. The couple rejected the offer. The case is lumbering toward trial, perhaps a year or more away.

"If the information was given to us, as it should have been, we would have run from that closing," Jim Parcesepe said during an interview in his kitchen.

In March 2003, two months after the closing, a Ridge Road neighbor approached Parcesepe, who was tearing out walls during his renovation of the first floor. Kelly and the children were not staying in the house at the time.

"The neighbor asked me if I was doing the work because of the major problems at the house. I said, 'What major problems?' A sick feeling came over me."

In the city's file on 84 Ridge Road, housing inspector Dennis Murray notes in his activity log that a lawyer representing the Chlastas called him in November 2002, a few weeks before the closing, "and asked to go over the entire file over the phone."

Yet none of the lead-inspection reports done by Boston Lead Co. LLC of Middletown or the city-approved lead-management plan were turned over to the Parcesepes at the closing. "Everyone knew more about that house than we did," Jim Parcesepe said.

On the property-condition disclosure forms, Mitchell Chlasta had checked the "yes" box in answer to the question, "Is lead paint present?" Under "location," Chlasta indicated that lead had been present in the windows and trim. On the multiple-listing document, it was indicated that lead

abatement had been done. That was the extent of the disclosure by the owner.

Jim Parcesepe, who has worked in construction much of his life, said that the windows and trim in the house were new. Since there was no other reference to lead issues in the house, he believed that the house did not have a lead-contamination problem.

In fact, in 2002 Boston Lead had noted lead-based paint throughout the house, and had documented soil contamination in the backyard, around the foundation of the house and in the front yard.

The city ordered the Chlastas to replace the soil, remove lead-based paint from the window frames and encapsulate other lead-based paint surfaces, particularly "chewable" surfaces less than 5 feet high, with a special polymer paint that dries into a rock-hard veneer. The house would be "lead safe," as long as the surfaces were not disturbed, as they would be during a renovation.

In response to the lawsuit, lawyers from Thomas Chlasta and the real estate agents say that the Parcesepes should have had a lead inspection done before they bought the house and that the couple failed to investigate the public record, or request information from the seller or the real estate agents.

Regulators said it's always a good idea when buying a pre-1978 house to have a lead inspection done – but not having an inspection does not relieve the seller of his disclosure obligation. "This isn't the kind of situation where caveat emptor Latin for 'Let the buyer beware' is appropriate," said Deborah E. Brown of the U.S. Environmental Protection Agency. She is the chief of the EPA's regional lead-enforcement program, based in Boston.

"The onus is on the seller or the lessor to disclose, so that an informed buyer will make a decision that is in the best interest of his or her family, particularly when there are young children involved. If you're a seller, you can't play 'gotcha' with a child's life," said Brown.

In hindsight, Kelly Parcesepe, 36, said she wishes she and her husband had commissioned a lead inspection. "We've been beating ourselves up about it," she said. "We relied on these people to be honest. How could we have been so naïve? We were just so elated that we were going to get our own home."

Thomas Chlasta did not return telephone messages seeking comment. Michelle Fournier-Rogers, the real estate agent who represented Mitchell Chlasta, could not be

reached last week. Deborah Hagel of Hagel & Associates Real Estate Co. of Cromwell, whose office represented the Parcesepes, did not return a telephone message.

In a cross-complaint he filed against Fornier-Rogers, Thomas Chlasta appears to hedge his bet. "If Mitchell Chlasta failed to adequately disclose the extent of the presence of lead, as alleged, then that failure was caused by the carelessness and negligence" of Fournier-Rogers, Thomas Chlasta asserts.

He contends that his father's real estate agent failed to "adequately advise Mitchell Chlasta of any obligations he may have had" and "failed to make disclosure to the Parcesepes on Mitchell Chlasta's behalf."

*Editor's Note: The SDREC office has received numerous calls regarding lead-based paint disclosure. There has been some confusion as to whether the new Seller's Property Condition Disclosure Form has eliminated the need for the lead paint disclosure. **It HAS NOT!** This form is a federal requirement and is needed IN ADDITION to the Seller's Property Condition Disclosure Form. The Environmental Protection Agency has recently conducted audits in South Dakota to ensure compliance with this requirement.*

HUD CHARGES PHILADELPHIA LANDLORDS WITH SIX VIOLATIONS OF FAIR HOUSING ACT

Property manager steers prospective black renter away from predominantly-white neighborhood

Feb. 6 - WASHINGTON, D.C. – The U.S. Department of Housing and Urban Development announced today that it has charged Daniel, Helene and Ava Waisbord, and Rhawn Street Apartments LLC, owners of more than 150 rental units, with violating the Fair Housing Act for refusing to rent a property to a prospective African-American renter, steering the person away from a predominantly-white neighborhood, and quoting her a higher rental price to discourage her from renting the home.

"The right to housing without regard to one's race or color isn't an option, it's the law," said Kim Kendrick, HUD Assistant Secretary for Fair Housing and Equal Opportunity. "We're working hard to educate housing providers and the public about their fair housing rights and responsibilities, but when a landlord illegally prevents someone from obtaining the housing of their choice, we will take swift enforcement action."

HUD's investigation revealed that Karla Baker, who is African-American, met Daniel Waisbord on Gillespie Street in Philadelphia to view a vacant house for rent. Baker liked the house and Waisbord told her a deposit was required to hold the home. Waisbord told her the rent was \$775 and that she would have to pay the water bill. Baker asked Waisbord if the rent could be reduced to \$750 monthly. Waisbord said that he could not reduce the rent on the property they were viewing, but that he had other properties he could reduce the rent on.

Baker insisted on renting the Gillespie St. property and gave Waisbord a deposit to hold the property. Waisbord then allegedly stated, "The neighbors don't like me and I am a white man, and they are Germans. I can decrease \$25 off the other place, but I can't rent this place to you, the neighbors won't like it."

Waisbord insisted that Baker see other properties he had on Rhawn St. Baker relented and later viewed the Rhawn St. properties. When Waisbord showed up for the viewing, Baker informed him that she did not like the location and the lack of security, and that she still wanted to rent the Gillespie St. property. Waisbord declined and returned Baker's deposit.

Less than one month later, Waisbord rented the house on Gillespie St. to two white renters for \$700 a month, plus \$42 a month for water.

Among other things, HUD is charging the owners, Daniel, Helene and Ava Waisbord, and Rhawn Street Apartments LLC with violating the Fair Housing Act for:

- Requiring a higher rent for the Gillespie Street house from Baker than from the white tenants who eventually rented it, because of Baker's race and color;
- Telling Baker that she could not rent the Gillespie Street property because the

neighbors would object to Baker's race and color;

- Misrepresenting to Baker that the Gillespie Street house was not available for rent to her, because of her race and color; and
- Steering the Complainant from renting the property at Gillespie Street on account of her race and color.

A hearing on the charges will be held by a HUD Administrative Law Judge on April 25, 2006 in the Philadelphia, Pennsylvania, area, unless either the complainant or respondent elects to have the case decided by a federal judge in U.S. District Court. An election to go to district court must be made by Feb. 21, 2006.

Housing discrimination charges heard before an Administrative Law Judge carry a maximum civil penalty of \$11,000 for a first offense – more if the respondent has committed prior violations of the Act – plus actual damages for the complainant, injunctive or other equitable relief, and attorney fees.

Should either party elect to go to district court, either party may request a jury trial. A district court may award the damages available in an administrative proceeding, and may also award punitive damages.

If neither party elects to proceed in federal district court, the case is brought on behalf of the complainant by a HUD attorney before a HUD Administrative Law Judge. If either party does elect, the case is brought on behalf of the complainant by an Assistant United States Attorney or an attorney from the U.S. Department of Justice in federal district court. In either forum, each party has the right to be represented by his or her own attorney.

HUD is the nation's housing agency committed to increasing homeownership, particularly among minorities; creating affordable housing opportunities for low-income Americans; and supporting the homeless, elderly, people with disabilities and people living with AIDS. The Department also promotes economic and community development as well as enforces the nation's fair housing laws. More information about HUD and its programs is available on the Internet at www.hud.gov and espanol.hud.gov.

Non-Renewals

The following licensees had not renewed their licenses as of February 8, 2006. Any license not renewed by the expiration date is canceled. If the license of an active firm or active qualifying broker is not renewed, all licenses hanging in that office must be returned to the Commission office. If your name appears on the list in error or you wish to reinstate the license, please contact the Commission office immediately.

Active Auctioneers:

McFerran, Harley – Watertown
Olivier, Rodney – Stickney
Swenson, John – Clear Lake

Active Broker Associates:

Clark, Steven T – Hartford
Dorothy, Grant E – Sioux Falls
Foltz, Rebecca S – Sioux Falls
Hernandez, Ignacio A – Sioux Falls
Johnson, Paul E – Madison
Jones, Kenneth W – Rapid City
Morgan, Stephen T – Wentworth
Paradis, Steven B – Rapid City
Stearns, Scott A – Sioux Falls
Zoellner, Steven K – Brandon

Active Brokers:

Abernathy, Larry D – Chamberlain
Altman, Adam H – Rapid City
Ausdemore, William L – Chamberlain
Barnes, Rickey L – Craig, MO
Bennett, Wilbur D – Sioux City, IA
Blumer, Michael D – Sioux Falls
Boehler, Darwin L – Rapid City
Burcham, Ivadell M – Obert, NE
Burke, J. Shanard – Pierre
Carson, Neva J – Sioux Falls
Darrah, Gene T – Granby, CO
De Yager, Albert, Inwood, IA
Dorothy, Charles L – Harrisburg
Elbers, Edwin D – Luverne, MN
Ferguson, Donald L, Philip
Ferguson, Earl D – Sturgis
Folkerts, Cynthia K – Mitchell
Folkerts, Paul E – Mitchell
Fossler, Phillip L – Polo, IL
Garman, John E – Buffalo, WY
Gerber, Verden E – Odessa, MN
Groen, Dennis C – Olivet
Gubbrud, John D – Alcester
Guinane, Edward A – Sioux City, IA
Hamaty, Jr., Nicholas – Independence, MN
Haugland, Charles B – Alcester
Johnson, Robert W – Rapid City
Kolb, James C – Sioux Falls
Kotab, David W – Wagner
Larsen, Marvin – Butte, NE
Loucks, Bernita G – Rapid City

Magness, Bradley J – Huron
McFarland, Fred A – Rapid City
Praus, Lawrence V – Dickinson, ND
Rhodes, Kevin T – Sidney, NE
Richardson, William M – Mobridge
Schempp, Wilfred – Sioux Falls
Stinger, Frederic R – S Sioux City, NE
Thompson, Patricia A – Bassett, NE
Vanderheyden, Michael J – Brooklyn Park, MN
Whalen, Dennis L – Sioux Falls
Wilkison, Gary L – Hawarden, IA
Wonka, Robert D – Oakland, NE

Active Residential Rental Agents:

Dummermuth, Mia J – Parker
Hauser, Jenny M – Watertown
Mitchell, Stacey L – Brookings

Active Home Inspectors:

Cerney, James – Mitchell
Fogel, Stan E – Aberdeen
Lesselyoung, Jon – Rapid City
Nielsen, Dean – Hendricks, MN
Pitkin, Paul G – Britton

Active Property Managers:

Keller, Eugene – Rapid City
Spies, Adam E – Watertown

Active Salespeople:

Baker, Gary C – Prior Lake, MN
Bitney, Kevin R – Emmet, NE
Hanna, James A – Kearney, NE
Hansen, Lois L – Pipestone, MN
Hitzeman, Chris W – Farmington, MN
Knust, Brian S – Verdigre, NE
Moriarty, Thomas W – Lake Elmo, MN
Olson, Pauline – Hettinger, ND
Wender, Janice M – Sioux City, IA

Active Timeshare Agents:

Nunez, Richard L – Hermosa

Inactive Brokers:

Anderson, Walter B – Rapid City
Vander Werff, Richard – Sanborn, IA

Inactive Broker Associates:

Kulesza, Ryan D – Big Sky, MT

Inactive Home Inspectors:

Dominicak, Robert H – Rapid City

Inactive Salespeople:

McFerran, Harley – Watertown

Mailing Address

The SDREC office is still receiving mail with old or incorrect addresses. This causes delays and these items do not reach our office in a timely manner. Please make sure that all correspondence is addressed correctly. The current address is:

SD Real Estate Commission
221 W. Capitol Ave. Ste. 101
Pierre, SD 57501

Correction

In the last issue, we reported that new Commission member, Paula Lewis, is an owner of RE/MAX in Rapid City.

Paula is not currently an owner. We apologize for the error.

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608.

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

Administrative Rule Changes

Key revisions and a complete set of the Administrative Rules regarding appraisers are available on the Appraiser Certification Program Website: www.state.sd.us/appraisers.

USPAP Q & A

Vol. 7, No. 12, December 2005

Fannie Mae Update Report Form 1004D

I have been asked to provide an update of a previous appraisal assignment and to report the results on Fannie Mae form 1004D. The form asks me to check “yes” or “no” in response to the question “Has the subject’s market value declined since the original appraisal date?”

Question # 1a: Does this constitute a new appraisal of the property?

Question # 1b: How much of my analysis must I include in the report?

The Cost Approach and Fannie Mae Form 1004

Question # 2: The new Fannie Mae Form 1004 indicates that Fannie Mae does not require completion of the cost approach. Is it acceptable to simply omit the cost approach when using this appraisal report form?

Citing the Source of the Value Definition and Fannie Mae Form 1004

Question # 3: USPAP requires an appraisal report to include a citation of the source of the value definition used for the appraisal. Is this information adequately addressed on the new Fannie Mae Form 1004?

Vol. 8, No. 1, January 2006

Engaged Directly by the Homeowner

Question: I was contacted by homeowners who want me to perform an appraisal of their home to be used for a loan at a federally regulated financial institution. What are my responsibilities in this potential assignment?

Readdress or Transfer

Question: Is it acceptable to readdress or transfer a completed appraisal report?

Recertification of Value

Question: I heard that recertifications of value are no longer permitted. Is this true?

Answers to the above questions can be found at: www.appraisalfoundation.org

New Licensees – December/January

Christopher D. Underberg, State-Registered – Sioux Falls, SD

Sheila Gregg, State-Registered – Sioux City, IA

Wendy L. Paz, State-Registered – Rapid City, SD

Terry L. Rydell, State-Registered – Watertown, SD

Katherine K. Tarrell, State-Registered – Sioux Falls, SD

Dorothy L. Kistner, State-Registered – Jefferson, SD

Lisa L. Jensen, State-Registered – Spearfish, SD

Joseph J. Lutter, State-Registered – Zell, SD

Review of Cases as of December 31, 2005

For the period January 1, 2005 through December 31, 2005 there have been 13 upgrade applications, 1 new application claiming experience, and 9 complaints submitted to the Department.

Upgrades – 6 upgrades issued; 3 agreed dispositions; 4 pending

New Application – 1 Final Order Issued Denying Application

Complaints – 4 dismissed with no action; 2 Settlement Agreements; 3 pending



FBI Announces Results of Operation “Quick Flip”

See Article on Page 4 of this Newsletter for more information.

Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal Evaluation Functions

(Continued from the previous issue of *The Real Estate View*) March 22, 2005

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration (the agencies) prepared this document in response to questions from federally regulated institutions (regulated institutions) on existing standards for selecting appraisers, ordering appraisals, accepting transferred appraisals, and other related topics. It should be reviewed in conjunction with the agencies' appraisal regulations, the "Interagency Appraisal and Evaluation Guidelines" (interagency guidelines), dated October 7, 1994, and the joint statement "Independent Appraisal and Evaluation Functions" (independence statement), dated October 28, 2003.

Accepting a Transferred Appraisal

9. Can a regulated institution accept an appraisal from a prospective borrower and determine its acceptability based on a review?

Answer: No, a regulated institution cannot accept a borrower-ordered appraisal.

10. Can an appraisal be transferred from one lender to another and, if so, under what circumstances?

Answer: A regulated institution may accept an appraisal transferred from another regulated institution or from a financial services institution (that is, a non-regulated institution), provided 1) the appraiser is engaged directly by the institution transferring the appraisal, 2) the appraiser has no direct or indirect interest in the property or transaction, 3) the existing appraisal or evaluation remains valid, and 4) the regulated institution determines that the appraisal conforms to the agencies' appraisal requirements and interagency guidelines and is otherwise appropriate. (A financial services institution describes entities that

provide services in connection with real estate lending transactions on an ongoing basis.)

Regulated institutions are expected to perform a more thorough review when accepting an appraisal from another financial services institution to confirm that the appraisal complies with the regulation and has sufficient information to support the lending decision. Moreover, the regulated institution accepting the appraisal should determine whether appropriate documentation is available to confirm that the financial services institution (not the borrower) ordered the appraisal.

11. Can a regulated institution accept an appraisal prepared by an appraiser who was engaged by a loan broker?

Answer: The agencies' appraisal regulations allow a regulated institution to accept an appraisal prepared by an appraiser engaged by another financial services institution, including a loan broker. This is allowed as long as the regulated institution has appropriate controls in place to ensure that the appraiser is acting on behalf of the financial services institution, the appraisal conforms to the requirements of the regulation and is otherwise acceptable, and the appraiser is independent from the borrower. Regulated institutions should review broker-ordered appraisals thoroughly to ensure that the appraisal complies with the regulation and meets the quality standards required by the institution's appraisal policies.

12. May an appraisal be readdressed to a regulated institution from the borrower or another institution?

Answer: A regulated institution cannot accept an appraisal that has been readdressed or altered by the appraiser with the intent to conceal that the original client was the borrower. Readdressing appraisals to conceal the original client, whether the client is a borrower or another financial services institution, is misleading and violates the agencies' regulations and USPAP.

13. May an appraisal be routed from one lender to a regulated institution via the borrower?

Answer: A regulated institution cannot accept an appraisal from the borrower unless the regulated institution can confirm that the appraisal was in fact ordered by another regulated institution or financial services institution. In accepting the appraisal, the regulated institution must also confirm that

the appraiser is independent of the transaction and that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable.

14. Can a borrower pay the appraiser directly for an appraisal that is ordered by the lender?

Answer: Since the regulated institution has engaged the appraiser for its services, the regulated institution should be the party to remit payment to the appraiser. The regulated institution may seek reimbursement from the borrower for the cost of the appraisal. However, the borrower may not recommend an appraiser to the institution or select the appraiser.

15. Can an appraiser deliver an appraisal report to more than one lender assuming the appraisal has been ordered by one of the lenders?

Answer: The agencies' appraisal regulations do not address whether an appraiser can deliver an appraisal report to more than one lender. The case may depend upon the provisions of the engagement letter. For example, the lender may specify in the engagement letter that the appraisal may be provided to another financial institution if the lender decides not to go forward on the loan. In the case of a syndicated loan, a lead lender is usually responsible for engaging the appraiser and providing copies of the appraisal to the other participating financial institutions. With regard to standards of confidentiality, USPAP directs an appraiser to be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

16. Can the regulated institution accept an appraisal prepared by an appraiser who is a family member of the loan broker who engaged him/her?

Answer: The agencies' appraisal regulations do not address family relationships between the appraiser and the person who engages the appraiser. However, the agencies' appraisal regulations do not permit a regulated institution to accept an appraisal in which the appraiser has a direct or indirect interest, financial or otherwise, in the property or the transaction. Therefore, the regulated institution should review appraisals where a potential conflict of independence may exist and should accept the appraisal only if it can determine that the appraiser is independent of the transaction.

17. Can the regulated institution accept an appraisal prepared by an appraiser who is

engaged by a financial services institution with whom the appraiser has an affiliated business relationship?

Answer: The business relationship between the financial services institution and the appraiser may not necessarily violate the independence requirement of the agencies' appraisal regulations. However, the agencies' appraisal regulations do not permit a regulated institution to accept an appraisal in which the appraiser has a direct or indirect interest, financial or otherwise, in the property or the transaction. The regulated

institution should evaluate the financial services institution's controls to ensure independence and that there is appropriate separation of responsibilities and reporting lines between the appraiser and the financial services institution's lending function.

18. How can a regulated institution ensure appraiser independence when accepting an appraisal prepared for a financial services institution?

Answer: Documentation (that is, an engagement letter) should be available to indicate that the financial services institution

(not the borrower) ordered the appraisal and that the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The original lender's engagement letter to the appraiser should be made part of the appraisal report to provide additional information on the identity of the client in order to ensure independence in the appraisal process.

[FDIC FIL-20-2005: Frequently Asked Questions. See

<http://www.fdic.gov/news/news/financial/2005/fil2005a.html>]

